

Board of Education Agenda Item

Item: M.

Date: January 12, 2005

Topic: First Review of Proposed Amendments to Virginia's Consolidated State Application Accountability Plan Under the *No Child Left Behind Act of 2001*

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Origin:

☐ Topic presented for information only (no board action required)

☒ Board review required by

☒ State or federal law or regulation

☐ Board of Education regulation

☐ Other: _____

☐ Action requested at this meeting ☒ Action requested at future meeting: Feb. 23, 2005 (date)

Previous Review/Action:

☒ No previous board review/action

☐ Previous review/action date _____ action _____

Background Information: The *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. In May 2002, the Virginia Board of Education submitted and received USED approval for its initial Consolidated State Application under the NCLB law. The NCLB application process involves multiple submissions of information, data, and policies. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the commonwealth. Virginia received USED approval for its accountability workbook in June 2003. USED required additional amendments to Virginia's workbook in September 2003. The accountability workbook that describes the policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2003-2004 school year are described in the amended workbook dated May 26, 2004.

States are permitted to revise their Consolidated State Application Accountability Workbook by submitting requests for review and approval to USED. Guidance from USED suggests an April 1 deadline for requesting changes that would impact AYP determinations in the current academic year. Based on two years of implementing NCLB, the Virginia Department of Education has identified certain procedures in implementing AYP policies that may result in unintended consequences.

Summary of Major Elements:

Revisions are being proposed to several critical elements in the Consolidated State Application Accountability Plan. The statutory authority that permits states to request, and the U.S. Secretary of Education to approve, waivers to requirements in NCLB is found in Section 9401 of the federal law:

“SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —

(1) receives funds under a program authorized by this Act; and

(2) requests a waiver under subsection (b).”

Virginia’s proposed amendments fall under five major areas: (1) application of the “other academic indicator” (in addition to performance and participation on the reading and mathematics tests) that is used to make AYP determinations when safe harbor is not invoked, (2) how states determine if a school, school division, and the state have made AYP, (3) use of test scores from multiple administrations, (4) testing and AYP calculation policies for limited English proficient students, and (5) testing and AYP calculation policies for students with disabilities. Attachment A describes each proposed amendment, the current NCLB policy approved for Virginia, and the rationale for the proposed request.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education accept for first review the proposed amendments to the Virginia Consolidated State Application Accountability Plan as permitted in Section 9401 of the federal law.

Impact on Resources: The provisions of the *No Child Left Behind Act of 2001* require the Department of Education to collect and analyze data related to determining Adequate Yearly Progress for all schools and school divisions in the state, assessing limited English proficient (LEP) students on their English language proficiency and content knowledge, and collecting and reporting additional data on LEP students. These requirements will continue to have an impact on the agency’s staff resources. The Virginia Department of Education is working with a consortium of the Council of Chief State School Officers (CCSSO) to identify the cost of implementing NCLB.

Timetable for Further Review/Action: Following final approval, the proposed revisions will be submitted to the United States Department of Education as amendments to Virginia’s Consolidated State Application Accountability Workbook by the deadline of April 1, 2005.

Attachment A
**Proposed Amendments to Virginia Consolidated State
Application Accountability Plan Required in NCLB**

January 12, 2005

NCLB Statutory Authority for Amendment Requests:

"SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —

(1) receives funds under a program authorized by this Act; and

(2) requests a waiver under subsection (b)."

<p>1. AYP: Targeting Choice and Supplemental Services (Critical Elements 1.6 and 4.1)</p>

Request: Virginia will target supplemental educational services and public school choice to the subgroup(s) and individual students that need the most help. Virginia will identify students and schools who are most in need by distinguishing between schools failing to make AYP for the entire student body and schools that achieve AYP for the entire student body but fail to meet it for a particular subgroup. Choice and supplemental services will apply to the subgroup(s) and individual students not making AYP.

Rationale: The statute treats all schools that fail to make Adequate Yearly Progress (AYP) equally, regardless of whether such failure is based on one subgroup failing to make AYP in one subject, or all subgroups failing to make AYP in both reading and mathematics. Currently, all students in a Title I school in school improvement status are eligible for school choice, and all low-income students in a school that is in the second year of school improvement or corrective action are eligible to receive supplemental services, regardless of their achievement. Using federal funds to provide school choice to students not eligible for Title I services limits the amount of funds available to serve eligible low-income students. Similarly, using federal funds to provide tutoring services to all low-income students in a school limits funds available to serve students in subgroups that need the most help.

2. AYP: Consecutive Years Same Subject and Same Subgroup (Critical Element 1.6)

Request: Virginia will identify for improvement only those schools that fail to make AYP for two consecutive years in the same subject and for the same subgroup.

Rationale: Currently, USED requires that Title I schools that fail to meet AYP for two (or more) consecutive years be placed in school improvement. USED regulations permit states to identify for school improvement only those schools that fail to meet AYP for two consecutive years in the same subject, but prohibit states from treating subgroups the same way. This model raises reliability concerns given the many subgroups (i.e., seven in Virginia) that could fail to demonstrate AYP for any given year. This policy also fails to recognize the different educational problems that may be evidenced and interventions that may be appropriate in cases where different subgroups fail to demonstrate AYP. Identifying schools in improvement based on not making AYP for two consecutive years in the same subject and same subgroup will target resources where needed most.

3. Reversing Order of School Improvement Sanctions (Critical Elements 1.6 and 4.1)

Request: Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of school improvement. Supplemental educational services may be offered to eligible students attending schools in improvement in the first year and public school choice in the second year.

Rationale: Currently, USED requires that Title I schools in Year One Improvement status provide eligible students public school choice. Title I schools in Year Two Improvement status must provide eligible students supplemental educational services and continue to offer choice. An effective school choice plan requires time to develop and communicate to parents and the public. AYP is calculated using test scores from the spring administration and, therefore, AYP

determinations are not available until late July or early August. This is too close to the opening of school for choice plans to be implemented effectively. A more effective intervention strategy for the first year of improvement is offering eligible students supplemental services while planning for choice implementation. If the school moves to Year Two Improvement status, the school would offer choice while continuing to provide supplemental services.

4. AYP: Division Accountability (Critical Element 4.1)

Request: Virginia will identify divisions for improvement only when they do not make AYP in the same subject, same subgroup, and all grade spans (i.e., elementary, middle, and high schools) for two consecutive years. Virginia will 1) monitor divisions that have not made AYP in one or more grade spans but have not been identified for improvement to ensure they are making the necessary curricular and instructional changes to improve achievement, and 2) take steps to ensure supplemental services are available to eligible students from a variety of providers throughout the state (including in divisions that have not been identified for improvement but that have schools that have been in improvement for more than one year).

Rationale: Currently, USED permits states, including Virginia, to identify for division improvement only those divisions that fail to make AYP for two consecutive years in the same subject, but prohibit states from treating subgroups the same way. This model raises reliability concerns given the many subgroups (i.e., seven in Virginia) that could fail to demonstrate AYP for any given year. This policy also fails to recognize the different educational problems that may be evidenced and interventions that may be appropriate in cases where different subgroups fail to demonstrate AYP. A similar problem exists when tests across all grade spans are combined for division accountability. Identifying divisions in improvement based on not making AYP for two consecutive years in the same subject, same subgroup, and grade span will target resources where needed most.

5. Use of Other Academic Indicator for Safe Harbor Only (Critical Elements 3.2 and 6.1)

Request: Virginia will comply with Section 1111(b)(2)(I)(i) that states the other academic indicators must be considered only if “safe harbor” is invoked. AYP determinations will be based primarily on meeting or exceeding the annual measurable objectives for reading and mathematics and the 95 percent participation rate requirement. The other academic indicators will be applied only when “safe harbor” is invoked.

Rationale: In March 2004 Virginia proposed basing AYP determinations primarily on meeting the annual measurable objectives for reading and mathematics and the participation rate requirement. The other academic indicators would only be applied when “safe harbor” is invoked. USED stated this amendment conflicts with statutory and regulatory requirements for determining AYP. However, Virginia’s understanding of Section 1111(b)(2)(C)(iv) is the definition of AYP must include an “other academic indicator” but decisions about AYP shall be based primarily on participation rates and student achievement on reading and mathematics assessments. Additionally, it is our interpretation that Section 1111(b)(2)(G) and Section 1111(b)(2)(I)(i) define how AYP is determined, and these sections permit the state and any division or school that meets the 95 percent participation rate and meets or exceeds the annual measurable objectives on the reading and mathematics assessments for all students as well as each subgroup to be designated as making AYP. We believe Section 1111(b)(2)(I)(i) states the other academic indicators must be considered only if “safe harbor” is invoked.

6. Minimum “n” and Division Accountability (Critical Elements 5.5 and 10.2)

Request: Virginia will use either 50 or 1 percent of the enrolled student population, whichever is greater, as the “minimum n” for purposes of calculating AYP and applying the 95 percent participation rate requirement at the division and state levels.

Rationale: Currently, Virginia uses 50 as the minimum n for schools, school divisions, and the state. This policy could result in the state or a large school division not making AYP, overall, due to a small percentage of students in a subgroup not making AYP. For example, in a division with 10,000 students in a tested grade, AYP would be based on all groups with an n-size of 100 or greater. School divisions with 5,000 or fewer students enrolled in tested grades would be held accountable for an n-size of 50.

7. First Score Requirement (Critical Element 3.2)

Request: Virginia will count a student's passing score on an expedited Standards of Learning test in the calculation of AYP. Expedited tests (retests) are provided during the official test administration window and are afforded to students who miss the scheduled administration of the test, or who took the scheduled test and did not pass (but achieved a score between 375-399), or did not pass due to exceptional and mitigating circumstances.

Rationale: Currently, USED allows states to count for AYP only the scores from the first official assessment administration or those taken prior to that time. This is a problem for Virginia, whose high school end-of-course assessments are required for graduation. The school should get credit for students who retake and pass the test in the same year, especially when the results may have been impacted by external factors affecting a student's performance on the test. Virginia believes counting a student's passing score on a retest rewards the student and the school for successful remedial efforts, and will increase the validity and reliability of AYP determinations.

8. Assessing Students with Disabilities (Critical Element 5.3)

Request: Virginia will allow Individualized Education Program (IEP) teams to make determinations about appropriate Standards of Learning (SOL) assessments for special education students whose instructional level is one to three years below grade level. IEP teams will make determinations based on state guidelines. Students who

make gains on statewide SOL assessments equivalent to or in excess of one grade level will have their scores counted towards making AYP.

Rationale: NCLB requires states to “beginning not later than school year 2005-2006, measure the achievement of students against challenging State academic content and student academic achievement standards in each of grades 3-8 in, at a minimum, mathematics, and reading or language arts...” NCLB further requires states to “provide for the participation in such assessments for all students; [and] the reasonable adaptations and accommodations for students with disabilities...necessary to measure the academic achievement of such students relative to State academic content and State academic achievement standards.... “ Finally, NCLB allows states to “incorporate data from the assessments...into a State-developed longitudinal data system that links student test scores...over time.” Permitting students with disabilities who are being instructed one to three years below grade level to be administered tests that measure the content they are learning meets the NCLB requirement to measure the academic achievement of students relative to state academic content and achievement standards while recognizing the individualized nature and pacing of the instruction received by special education students. Further, allowing the scores of students who achieve one or more years of growth as measured by the SOL assessments to count towards AYP recognizes the achievement of schools and school districts in moving these students toward grade level standards.

9. Inclusion of Limited English Proficient Students in State Assessments (Critical Element 5.4)

Request: Virginia will allow the reading component of the English language proficiency (ELP) test required under Title I, and the plain language forms of the statewide mathematics assessments as the academic assessments required under section 1111(b)(3). These assessments will be used to hold a school/division/state accountable for LEP students’ academic achievement during their first 1-3 years of enrollment in the U.S. Students who do not achieve a passing score on the reading component of the ELP test would not be counted in

the AYP pass rate calculation, but would be counted toward the 95 percent participation rate calculation. This change would allow Virginia to continue use of state policies in its existing state accountability program exempting newly-arrived LEP test takers.

Rationale: Currently, USED requires that all students enrolled be included in state assessments, and that 95 percent of such students (overall and in each subgroup) participate for a school/division/state to demonstrate AYP. This includes LEP students, except when assessing English/reading of students enrolled in the country for the first year, regardless of when they entered the country and their language deficiency. In some instances, however, it is not educationally valid or appropriate for newly enrolled LEP students to participate in English or mathematics state assessments.

<i>10. Graduation Rate and Other Academic Indicator (Critical Element 7.1)</i>

Request: Virginia will define “standard number of years for graduation” as four years or less except for students with disabilities and students with limited English proficiency (LEP) who will be allowed additional time to receive a high school diploma when that length of time is indicated as appropriate in a student’s Individualized Education Program (IEP) or by the student’s school-based LEP team.

Rationale: The Code of Virginia requires school divisions to provide students with disabilities and LEP students of school age a free public education. The age requirement in state and federal laws is consistent. Students with disabilities and students with limited English proficiency have special educational needs that may require additional time for them to meet challenging academic standards and graduation requirements.

Additional Requests for NCLB Policy Revisions

English Language Proficiency Assessment: Exclusion of Kindergarten and First Grade Limited English Proficient (LEP) Students from Reading and Writing English Language Proficiency Assessment Requirement (Definition of LEP Cohort, in September 1, 2003, Submission, as amended on November 24, 2003, and May 26, 2004, p. 14)

Request: Virginia will not require kindergarten and first grade limited English proficient (LEP) students to take the reading and writing components of the English language proficiency assessment. The English language proficiency of kindergarten and first grade LEP students will be assessed only on listening and speaking skills.

Rationale: The federal requirement of assessing the reading and writing ability of kindergarten and first grade LEP students puts an extra burden on young English language learners that is not placed on their native-English speaking peers. The *No Child Left Behind Act of 2001* does not require standardized testing of native English speakers until the 3rd grade. In order to comply with the requirement in the law to assess the English language proficiency of all LEP students as well as provide meaningful information to school divisions and the state about the progress of these students in becoming fully proficient in English, Virginia will assess only their listening and speaking skills. Assessing the reading and writing skills of these students would require a small group or individual administration of the component of the test for each LEP student. The information about these students' English language proficiency that will be gained from the standardized assessment in these two skill areas does not justify the time required to administer the assessment.

Immigrant Children and Youth Funding Formula under Title III: Revision of Formula to Reduce State Reservation from 15 percent to 5 percent (Virginia Consolidated State Application, p.82, d.)

Request: Virginia will revise the state reservation for Immigrant Children and Youth Funding under Title III: Language Instruction for Limited English Proficient and Immigrant Students from 15 percent to 5 percent.

Rationale: Under section 3114(d)(1) states are required to reserve a percentage of the Title III funding for subgrants to eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth. Immigrant children and youth are defined as those individuals who: 1) are aged 3 through 21; 2) were not born in any state; and 3) have not been attending one or more schools in any one or more states for more than 3 full academic years. A state may not reserve more than 15 percent for this type of subgrant.

Reducing the state reservation for the immigrant children and youth funding formula from 15 percent to 5 percent will increase the per pupil amount to be awarded through the Title III funds for all limited English proficient (LEP) students. The immigrant children and youth formula funding permits awards only to those school divisions that have experienced a significant increase in the number or percentage of immigrant children and youth as compared to the average of the 2 preceding fiscal years, prior to the fiscal year for which the subgrants are awarded. This requirement has resulted in a significant number of school divisions being ineligible for the immigrant children and youth award even though they enroll immigrant children and youth. A reduction in the state reservation for the award would result in an increase in per pupil funding for LEP students awarded through the Title III funds thus offsetting the potential reduction in immigrant children and youth funding if the school division does not qualify for these funds.